

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

BRYAN EUWER,
Plaintiff

v.

THE CINCINNATI INSURANCE COMPANY
and THE CINCINNATI CASUALTY
COMPANY,
Defendants

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Civil No. 1:21-cv-00372-RP

BRYAN EUWER'S DEMAND FOR JURY TRIAL

TO THE HONORABLE ROBERT PITMAN, UNITED STATES DISTRICT JUDGE:

Comes now Bryan Euwer, doing business as Euwer & Associates, ("Euwer"), designated by Defendants as Plaintiff, and, pursuant to Fed. R. Civ. P. 38, demands a trial by jury in this action of all issues triable by jury in this matter.

Statement of Facts and Procedural Status

1. The Removing Parties, The Cincinnati Insurance Company and The Cincinnati Casualty Company (collectively "Cincinnati"), filed their Notice of Removal (See Document 1) in this case on April 29, 2021. Euwer was served with the Notice of Removal through the CM/ECF system on that date.

2. This Demand for Jury Trial is filed and serve within 14 days after Euwer was served with the Notice of Removal.

3. The Agreed Scheduling Order (a true and correct copy of which is attached as Exhibit "A") in the state court lawsuit from which this action was removed (Cause No. D-1-GN-19-008653; *McCarty Family Real Estate LLC and MTDDMHL, Ltd., a limited partnership v. Sabre Commercial, Inc., B3 Commercial Management, LLC, Western Oaks 19 Construction, Inc., Bryan Euwer d/b/a Euwer & Associates, Aircraft Mechanical d/b/a Aircraft Mechanical, and HTS, Inc.*; in the 419th District Court of Travis County, Texas) had set this case for jury trial on August 15, 2022, or if this date is later determined to be a non-jury date by the 2022 jury trial calendar date, then trial will be set on a day after August 15, 2022.

Argument and Authorities

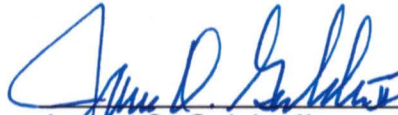
4. A Demand for Jury had not previously been made in the state court proceeding because state law and procedure in this regard is similar to federal law and procedure in that, under the law in state court at the time in effect when Cincinnati removed this case to this Court, once the state court signed the order setting the case for a jury trial, it could not disregard the order and withdraw the case from the jury docket just before trial, even if no jury fee was paid. *Mercedes-Benz Credit Corp. v. Rhyne*, 925 S.W.2d 664, 666 (Tex.1996). Nor could a party to the state court lawsuit, which Cincinnati was, withdraw a request for a jury so the case may be heard by the court, if any other party either made a timely objection or filed its own request for a jury, thereby preventing the withdrawal. *Lambert v. Coachmen Indus.*, 761 S.W.2d 82, 85 (Tex.App.-Houston [14th Dist] 1988, writ denied). The state trial court could not have withdrawn the case from the jury docket on a party's motion or request for withdrawal over another party's objection, even if the objecting party did not request a jury or pay the fee, see Tex. R. Civ. P 220; *In re J.N.F.*, 116 S.W.3d

426, 434 (Tex.App.-Houston [14th Dist.] 2003, no pet.); its own initiative *sua sponte*. Bank of Houston v. White, 737 S.W.2d 387, 388 (Tex.App.- Houston [14th Dist.] 1987, orig. proceeding). If the state court signed an order setting the case for a jury trial, even if the order was signed by mistake, the state court could not disregard its own order and force the parties to try the case without a jury. *Mercedes-Benz Credit Corp. v. Rhyne*, 925 S.W.2d 664, 666 (Tex.1996); *Texas Valley Ins. Agency v. Sweezy Constr., Inc.*, 105 S.W.3d 217, 221 (Tex.App.Corporus Christi 2003, no.pet.). A proper demand for a jury trial may be withdrawn only if the parties consent. Fed. R. Civ. P 38(d); *Bennett v. Pippin*, 74 F.3d 578, 586-87 (5th Cir.1996); *Fuller v. City of Oakland*, 47 F.3d 1522, 1531 (9th Cir. 1995). But see *Kramer v. Banc of Am. Sec., LLC*, 355 F.3d 961, 968 (7th Cir.2004) (consent of all parties not required to withdraw demand for jury trial that is not right under FRCP 39). Once a jury trial has been timely demanded, the court cannot convert it to a bench trial on its own initiative, unless the court finds that there is no federal right to a jury trial on some or all issues. See Fed. R. Civ. P 39(a)(2); *Fuller*, 47 F.3d at 1533. Once one party files a demand for a jury trial, all other parties are entitled to rely on that demand for the issues covered and do not need to file their own demands. *California Scents v. Surco Prods.*, F.3d 1102, 1106 (9th Cir.2005); *Bennett v. Pippin*, 74 F.3d 578, 586 (5th Cir. 1996).

Conclusion and Jury Demand

Therefore, Euwer respectfully requests a jury trial on all issues.

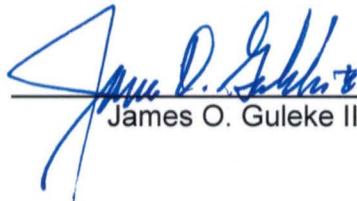
Respectfully submitted,
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James O. Guleke II
(Signature of file with the U.S. District Clerk)
State Bar No. 08612200
Attorney for Bryan Euwer

CERTIFICATE OF SERVICE

Pursuant to Fed.R.Civ.P. 5(d) and Local Rule CV-5(c), the undersigned certifies that on the 10th day of May, 2021, a true and correct copy of the above and forgoing Demand for Jury was filed with the clerk and served upon all the attorneys of record for all of the parties in this action through the CM/ECF system.



James O. Guleke II

Velva L. Price
District Clerk
Travis County
D-1-GN-19-008653
Alexus Rodriguez

CAUSE NO. D-1-GN-19-008653

McCarty Family Real Estate, LLC and
MTDMHL, LTD, a Limited Partnership

§

In the District Court

§

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Plaintiffs

§

§

vs.

§

§

Sabre Commercial, Inc.

§

§

Defendant/Third-Party Plaintiff

§

§

and

§

§

419th Judicial District

B3 Commercial Management, LLC,

§

Western Oaks 19 Construction, Inc.,

§

Brian Euwer d/b/a Euwer & Associates,

§

Aircraft Inc., d/b/a Aircraft Mechanical,

§

HTS, INC, and Agnew Associates, Inc.

§

§

Defendants

§

§

and

§

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Floydco, Inc. d/b/a Floyd's Glass

§

Company, Larry Doggett d/b/a

§

Weathertex Waterproofing, Live Oak

§

Drywall & Acoustical Systems, Inc. d/b/a

§

Live Oak Construction, CD Lone Star, Inc.,

§

Petersendean Texas, Inc., Fireproof

§

Contractors, Inc., Mechanical Technical

§

Services, Inc. d/b/a Icon Plumbing, Diaz

§

Plastering, Inc., and CMC Steel

§

Fabricators, Inc., and Icon Plumbing,

§

Heating & Air, Ltd, n/k/a Original

§

Plumbing Partner Ltd.

§

§

Defendants/Third-Party

§

Travis County, Texas

*Defendants***Agreed Scheduling Order**

In accordance with Rule 166 of the Texas Rules of Civil Procedure, the Court enters the following Agreed Scheduling Order to control the deadlines in this case. The deadlines must be firm dates and not in terms of days before the trial date. All deadlines except the Trial date, may be extended by mutual agreement of the parties. In accordance therewith, the Court ORDERS as follows:

March 31, 2021	Deadline to complete ADR/mediation or file motion to excuse.
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April 15, 2021	Plaintiffs must designate all testifying expert witnesses and provide written reports for retained testifying expert witnesses
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Plaintiffs' deadline to amend or supplement pleadings. Any responsive pleadings to Plaintiffs' amended pleadings are due on July 15, 2021.

July 15, 2021	Defendants must designate all testifying expert witnesses and provide written reports for retained testifying expert witnesses
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Defendants' deadline to amend or supplement pleadings. Any responsive pleadings to Defendants' amended pleadings are due on August 31, 2021.

August 31, 2021	Third-Party Defendants and all other parties must designate all testifying expert witnesses and provide written reports for retained testifying expert witnesses.
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Third-Party Defendants' deadline to amend or supplement pleadings. Any responsive pleadings to Third-Party Defendants' amended pleadings are due on September 15, 2021.

July 1, 2022	All dispositive motions must be filed on or before this date.
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July 15, 2022	Deadline to complete written and oral discovery.
July 15, 2022	"All challenges to expert witnesses shall be filed."
August 3, 2022	"Counsel shall exchange their lists of fact and expert witnesses, including rebuttal witnesses that reasonably should be anticipated, that each intends to call at trial. Persons not so identified will not be allowed to testify unless good cause is shown"
	"Counsel shall exchange their lists of exhibits that each reasonably anticipates will be offered in evidence. Exhibits not timely listed will not be admitted unless good cause is shown. Counsel should stipulate insofar as possible to the authenticity and admissibility of exhibits to be used at trial."
	"Counsel shall exchange page and line references for all deposition testimony to be offered in the case in chief."
August 5, 2022	"Counsel shall exchange motions in limine, which shall not include the matters in the Travis County Standing Order in Limine."
August 9, 2022	"Counsel shall exchange cross-designations of page and line references of all deposition testimony to be used at trial. Counsel shall also provide a written statement of page and line references to their respective designations on which they seek a ruling on any evidentiary objections, including the basis for the objections. Failure to timely object will be deemed a waiver of any objections."

"Each party shall file and serve on all other parties a proposed jury charge, including questions, definitions, and instructions, which shall include citations to the Texas Pattern Jury Charge and other authority that supports the submission."

August 11, 2022

"Counsel shall provide a written statement of page and line references to cross-designations on which they seek a ruling on any evidentiary objections, including the basis for the objections. Failure to timely object will be deemed a waiver of the objection."

August 12, 2022

"Counsel shall confer in person or by telephone, in good faith, in an attempt to resolve (a) all objections to deposition designations and exhibits, (b) all disputed motions in limine filed by an opposing party, and (c) all disputed language in the opposing party's proposed jury charge. Any objections not resolved by conference will be heard at the pretrial conference, which is generally held on the first morning of trial."

TBD

Pretrial Hearing: "At the pretrial hearing, which is usually held on the first morning of trial, counsel shall submit the charge to the Court electronically in Word format, noting the provisions of the Pattern Jury Charges that apply to each instruction and question, if any. If case law supports the submission of particular provisions of the charge, note that in the charge and provide a copy of the case(s) with the petition history noted and the material language highlighted for the Court."

"In addition, counsel shall furnish the Court two hard copies of their active trial pleadings, exhibit lists, witness lists, motions in limine, and proposed orders on their motions in limine."

August 15, 2022

This case is set for jury trial on August 15, 2022, or if this date is later determined to be a non-jury date by the 2022 jury trial calendar date, then trial will be set on a day after August 15, 2022.

Those dates in August 2022 and later are conditioned upon in-person jury trials being allowed and available. Those dates not established by the Standing Order may be changed by Rule 11 agreement by the parties. This Scheduling Order supersedes all prior scheduling orders and trial settings, including any different or additional deadlines in either.

SIGNED this 22nd day of DECEMBER, 2020.


PRESIDING JUDGE

AGREED as to form, and the following counsel hereby certify that none of the proposed deadlines are shorter than those in the Standing Order, and that they will not modify the dates in the Standing Order by Rule 11 agreement:

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Sean B. Swords

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Associated Case Party: McCarty Family Real Estate, LLC

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Associated Case Party: HTS, Inc.

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Associated Case Party: Brian Euwer

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Associated Case Party: Mechanical Technical Services, Inc.

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Associated Case Party: CommercialMetalsCompany

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Associated Case Party: CommercialMetalsCompany

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Associated Case Party: Floydco, Inc. dba Floyd's Glass Company

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Associated Case Party: Live Oak Drywall & Acoustical System

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Associated Case Party: Diaz Plastering, Inc.

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Associated Case Party: Icon Plumbing Heating & Air, Ltd

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Associated Case Party: Icon Plumbing Heating & Air, Ltd

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